

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 2304

By: Roach

COMMITTEE SUBSTITUTE

An Act relating to children and pregnant women; amending 10 O.S. 2001, Sections 7003-2.1 and 7003-3.8, which relate to the Oklahoma Children's Code; authorizing the Department of Human Services to take certain children into emergency custody; requiring certain placement of at-risk infants; requiring establishment of a placement protocol for at-risk infants; providing criteria for defining at-risk infants; prohibiting certain placements; providing legislative intent; modifying jury trial requirements at adjudication; requiring jury trial for termination of parental rights proceeding; amending 10 O.S. 2001, Section 7103, which relates to the Oklahoma Child Abuse Reporting and Prevention Act; making false accusations a felony and increasing fine; amending 10 O.S. 2001, Sections 7501-1.3 and 7505-6.2, which relate to the Oklahoma Adoption Code and children; clarifying intent of sections; updating language; amending 20 O.S. 2001, Section 91.2, which relates to court dockets; providing for the establishment of maternal drug court dockets; amending 22 O.S. 2001, Sections 471, 471.1 and 471.2, which relate to the Oklahoma Drug Court Act; authorizing establishment of separate maternal drug court program docket; defining term; modifying eligibility qualifications for maternal drug court offenders; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 10 O.S. 2001, Section 7003-2.1, is amended to read as follows:

Section 7003-2.1 A. ~~A~~ Pursuant to the provisions of this section, a child may be taken into ~~protective~~ custody prior to the filing of a petition:

1. By a peace officer or employee of the court, without a court order if the child's surroundings are such as to endanger the

welfare of the child or if continuation of the child in the child's home is contrary to the health, safety or welfare of the child;

2. By an order of the district court issued upon the application of the office of the district attorney. The court shall include in the order a specific determination that continuation of the child in the child's home is contrary to the health, safety or welfare of the child. The application presented by the district attorney may be supported by a sworn affidavit which may be based upon information and belief. The application shall state facts sufficient to demonstrate to the court that there is reasonable suspicion to believe the child is in need of protection due to abandonment, abuse or neglect, or is in surroundings that are such as to endanger the welfare of the child. The application may be verbal. If verbal, a written application shall be submitted to the district court within one (1) judicial day from the issuance of the order;

3. By order of the district court when the child is in need of medical or mental health treatment in order to protect the child's health, safety or welfare and the child's parent, legal guardian, custodian or other person having custody or control of the child is unwilling or unavailable to consent to such medical or mental health treatment or other action pursuant to this article. The court shall specifically include in the order authorization for such medical or mental health treatment as it deems necessary. The court shall include in the order a specific determination that continuation of the child in the child's home is contrary to the health, safety or welfare of the child; and

4. Pursuant to the provisions of Section ~~2~~ 7115.1 of this ~~act~~ title.

B. Whenever a child is taken into ~~protective~~ custody pursuant to subsection A of this section:

1. ~~Such~~ The child may be taken to a children's shelter located within the county where protective or emergency custody is assumed or, if there is no children's shelter within the county, to a children's shelter designated by the court, provided that the placement of an infant who appears to be or has been determined to have a medical condition or illness that falls within the placement protocol for at-risk infants established pursuant to subsection D of this section shall be taken to a location as provided in the placement protocol;

2. Except as otherwise provided by subsection C of this section, ~~such~~ the child may be taken before a judge of the district court for the purpose of obtaining an order for ~~protective~~ emergency custody. The court may place the child in the emergency custody of the Department of Human Services pending further hearing specified by Section 7003-2.4 of this title. The Department may place the child in a kinship foster care home, another foster home or other suitable placement that is determined by the Department to meet the needs of the child, provided that the placement of an infant who appears to be or has been determined to have a medical condition or illness that falls within the placement protocol for at-risk infants established pursuant to subsection D of this section shall be taken to a location as provided in the placement protocol;

3. ~~Such~~ The child may be taken directly to or retained in a health care facility for medical treatment, when it reasonably appears to the peace officer or court employee that the child is in need of emergency medical treatment to maintain the child's health, or as otherwise directed by the court; or

4. ~~Such~~ The child may be taken directly to or retained in a mental health facility for mental health care, or inpatient mental health evaluation or inpatient mental health treatment, in accordance with the provisions of the Inpatient Mental Health Treatment of Children Act, when it reasonably appears to the peace

officer or court employee that the child is in need of emergency mental health care to preserve the child's health, or as otherwise directed by the court; and

5. Except as otherwise provided by subsection C of this section, the district court of the county where the protective or emergency custody is assumed shall be immediately notified, verbally or in writing, that the child has been taken into ~~protective~~ custody. If notification is verbal, written notification shall be sent to the district court within one (1) judicial day of such verbal notification.

C. The court may provide, in an order issued pursuant to this section or by a standing order or rule, for the disposition of children taken into ~~protective~~ or emergency custody and notification of the ~~protective~~ custody. Such order or rule shall be consistent with the provisions of subsection B of this section, but may also:

1. Designate a licensed child care facility other than a children's shelter appropriate for the temporary care of deprived children if such facility is willing to provide care, provided that the placement of an infant who appears to be or has been determined to have a medical condition or illness that falls within the placement protocol for at-risk infants established pursuant to subsection D of this section shall be taken to a location as provided in the placement protocol;

2. Authorize the release of a child from ~~protective~~ custody in accord with such criteria as the court specifies or the placement of a child with such responsible persons as the court may designate and who are willing to provide care for the child pending further proceedings; and

3. Require such notice to the court concerning the assumption of ~~protective~~ custody and the disposition of children taken into ~~protective~~ custody as the court may direct.

D. 1. The Department of Human Services shall establish by rule a placement protocol for at-risk infants.

2. Factors for determining at-risk infants include, but are not limited to:

- a. premature infants,
- b. history of respiratory distress,
- c. oxygen dependency,
- d. diagnosis requiring special care beyond routine infant care,
- e. infants under six (6) weeks of age, and
- f. medical conditions or illnesses of the infants that without protocol placements may result in increased episodes of illness, prolonged hospitalization and increased cost for care.

3. Appropriate placement pursuant to this subsection of at-risk infants shall include, but not be limited to, foster care, approved kinship foster care and health care facilities. A children's shelter shall not be deemed to be an appropriate placement for at-risk infants unless the shelter meets the placement protocol.

4. If the at-risk infant is in a hospital setting, the infant may be placed in another appropriate placement pursuant to this subsection, only upon the release of the infant from the hospital by the infant's primary physician.

E. 1. It is the intent of the Legislature that the protection or emergency custody of a child shall not occur at an educational or child care facility unless it is determined by a peace officer, a district court, or employee of the court that the assumption of custody of the child at such educational or child care facility is necessary to avoid a breach of the peace or endangerment to the child or peace officer, employee of the court or other person authorized by the court to take the child into custody.

2. The Department of Human Services shall establish specific policies and procedures when an employee of the Department may take a child into emergency custody pursuant to a court order at an educational or child care facility.

~~D. F.~~ No child taken into ~~protective~~ custody pursuant to this section shall be confined in any jail, adult lockup, or adult or juvenile detention facility. No child shall be transported or detained in a secure facility in association with delinquent, criminal, vicious, or dissolute persons.

SECTION 2. AMENDATORY 10 O.S. 2001, Section 7003-3.8, is amended to read as follows:

Section 7003-3.8 ~~In adjudicatory hearings to determine if a child is deprived, any person~~ A parent entitled to service of summons ~~or~~, the state or the child shall have the right to demand a trial by jury, ~~which~~ only in the following circumstances:

1. When the initial petition to determine if a child is deprived also contains a request for termination of parental rights;
or

2. When, following a hearing in which the child is adjudicated deprived, a request for termination of parental rights is filed by the state or the child.

The demand for a jury trial shall be granted ~~as in other cases,~~ unless waived, or the ~~judge~~ court on ~~his~~ its own motion may call a jury to try any such case. Such jury shall consist of six (6) persons.

SECTION 3. AMENDATORY 10 O.S. 2001, Section 7103, is amended to read as follows:

Section 7103. A. 1. Every:

- a. physician or surgeon, including doctors of medicine and dentistry, licensed osteopathic physicians, residents and interns, examining, attending or treating a child under the age of eighteen (18) years,

- b. registered nurse examining, attending or treating such a child in the absence of a physician or surgeon,
- c. teacher of any child under the age of eighteen (18) years, and
- d. other person

having reason to believe that a child under the age of eighteen (18) years is a victim of abuse or neglect, shall report the matter promptly to the Department of Human Services. Such reports may be made by telephone, in writing, personally or by any other method prescribed by the Department. Any report of abuse or neglect made pursuant to this section shall be made in good faith.

2. Every physician or surgeon, including doctors of medicine, licensed osteopathic physicians, residents and interns, or any other health care professional attending the birth of a child who tests positive for alcohol or a controlled dangerous substance shall promptly report the matter to the Department of Human Services.

3. No privilege or contract shall relieve any person from the requirement of reporting pursuant to this section.

4. The reporting obligations under this section are individual, and no employer, supervisor or administrator shall impede or inhibit the reporting obligations of any employee or other person. No employer, supervisor or administrator of any employee or other person required to provide information pursuant to this section shall discharge, or in any manner discriminate or retaliate against, the employee or other person who in good faith provides such child abuse reports or information, testifies, or is about to testify in any proceeding involving child abuse or neglect; provided, that the person did not perpetrate or inflict such abuse or neglect. Any employer, supervisor or administrator who discharges, discriminates or retaliates against the employee or other person shall be liable for damages, costs and attorney fees. Internal procedures to facilitate child abuse or neglect reporting and inform employers,

supervisors and administrators of reported suspected child abuse or neglect may be established provided that they are not inconsistent with the provisions of this section and that such procedures shall not relieve the employee or such other person from the individual reporting obligations required by this section.

5. Every physician or surgeon making a report of abuse or neglect as required by this subsection or examining a child to determine the likelihood of abuse or neglect and every hospital or related institution in which the child was examined or treated shall provide copies of the results of the examination or copies of the examination on which the report was based and any other clinical notes, x-rays, photographs, and other previous or current records relevant to the case to law enforcement officers conducting a criminal investigation into the case and to employees of the Department of Human Services conducting an investigation of alleged abuse or neglect in the case.

B. If the report is not made in writing in the first instance, it shall be reduced to writing by the Department of Human Services, in accordance with rules promulgated by the Commission for Human Services, as soon as may be after it is initially made by telephone or otherwise and shall contain the following information:

1. The names and addresses of the child and the child's parents or other persons responsible for the child's health, safety or welfare;

2. The child's age;

3. The nature and extent of the abuse or neglect, including any evidence of previous injuries;

4. If the child has tested positive for alcohol or a controlled dangerous substance; and

5. Any other information that the maker of the report believes might be helpful in establishing the cause of the injuries and the identity of the person or persons responsible therefor if such

information or any part thereof is known to the person making the report.

C. Any person who knowingly and willfully fails to promptly report any incident as provided in this section may be reported by the Department of Human Services to local law enforcement for criminal investigation and, upon conviction thereof, shall be guilty of a misdemeanor.

D. 1. Any person who knowingly and willfully makes a false report pursuant to the provisions of this section or a report that the person knows lacks factual foundation may be reported by the Department of Human Services to local law enforcement for criminal investigation and, upon conviction thereof, shall be guilty of a ~~misdemeanor~~ felony.

2. If a court determines that an accusation of child abuse or neglect made during a child custody proceeding is false and the person making the accusation knew it to be false at the time the accusation was made, the court may impose a fine, not to exceed ~~Five Thousand Dollars (\$5,000.00)~~ Ten Thousand Dollars (\$10,000.00) and reasonable attorney fees incurred in recovering the sanctions, against the person making the accusation. The remedy provided by this paragraph is in addition to paragraph 1 of this subsection or to any other remedy provided by law.

E. 1. Nothing in this section shall be construed to mean a child is abused or neglected for the sole reason the parent, legal guardian or person having custody or control of a child, in good faith, selects and depends upon spiritual means alone through prayer, in accordance with the tenets and practice of a recognized church or religious denomination, for the treatment or cure of disease or remedial care of such child.

2. Nothing contained in this subsection shall prevent a court from immediately assuming custody of a child, pursuant to the Oklahoma Children's Code, and ordering whatever action may be

necessary, including medical treatment, to protect the child's health or welfare.

F. Nothing contained in this section shall be construed to exempt or prohibit any person from reporting any suspected child abuse or neglect pursuant to subsection A of this section.

SECTION 4. AMENDATORY 10 O.S. 2001, Section 7501-1.3, is amended to read as follows:

Section 7501-1.3 As used in the Oklahoma Adoption Code:

1. "Abandonment" includes, but is not limited to, the following:

- a. the parent has left the minor alone or in the care of another who is not the parent of the minor without identifying the minor or furnishing a means of identification for the minor, the whereabouts of the parents are unknown, and the minor's identity cannot be ascertained by the exercise of reasonable diligence,
- b. the parent has voluntarily left the minor alone or in the care of another who is not the parent of the minor and expressed a willful intent by words, actions, or omissions not to return for the minor, or
- c. the parent fails to maintain a substantial and positive relationship with the minor for a period of six (6) consecutive months out of the last fourteen (14) months immediately preceding the filing of a petition for termination of parental rights. For purposes of this section, "establish and/or maintain a substantial, positive relationship" includes but is not limited to:
 - (1) frequent and regular contact with the minor through frequent and regular visitation or

frequent, regular communication to or with the minor, and

- (2) exercising parental rights and responsibilities. Incidental or token visits or communications shall not be sufficient to establish or maintain a substantial and positive relationship with the minor.

The term "abandonment" shall not include when a parent has relinquished a minor to or placed the minor in the custody of a licensed child-placing agency or other court-appointed individual;

2. "Adoptee" means an individual who is adopted or is to be adopted;

3. "Adult" means an individual who has attained eighteen (18) years of age;

4. "Minor" means any person who has not attained the age of eighteen (18) years;

5. "Child-placing agency" means any child welfare agency licensed pursuant to the Oklahoma Child Care Facilities Licensing Act and authorized to place minors for adoption;

6. "Contested proceeding" means any proceeding pursuant to the Oklahoma Adoption Code in which an interested party enters an appearance to contest the petition;

7. "Department" means the Department of Human Services;

8. "Direct placement adoption" means any adoption in which the minor is not placed for adoption by the Department of Human Services or a child-placing agency;

9. "Guardian" means an individual, other than a parent, appointed by a court to be the guardian of the person of a minor;

10. "Parent" means an individual who is the biological or adoptive parent of a child or who is legally recognized as a mother or father of a child. The term "parent" does not include an

individual whose parental relationship to a child has been terminated;

11. "Permanent relinquishment" means the voluntary surrender of the rights of the parent or guardian with respect to a minor, including legal and physical custody of the minor, to a child-placing agency, Department of Human Services or any person with the assent of the court, by a minor's parent or guardian, for purposes of the minor's adoption;

12. "Putative father" means the father of a minor born out of wedlock or a minor whose mother was married to another person at the time of the birth of the minor or within the ten (10) months prior to the birth of the minor and includes, but is not limited to, a man who has acknowledged or claims paternity of a minor, a man named by the mother of the minor to be the father of the minor, or any man who is alleged to have engaged in sexual intercourse with a woman during a possible time of conception;

13. "State" means any state, territory, or possession of the United States, the commonwealth of Puerto Rico, and the District of Columbia; and

14. "Stepparent" means an individual who is the spouse or surviving spouse of a parent of a minor, but who is not a legal parent of the minor.

SECTION 5. AMENDATORY 10 O.S. 2001, Section 7505-6.2, is amended to read as follows:

Section 7505-6.2 A. Before the final hearing on the petition for adoption, the following must be filed in the proceeding when available:

1. A certified copy of the birth certificate or other record of the date and place of birth of the minor;

2. Any consent, extra judicial consent, or permanent relinquishment, with respect to the minor that has been executed, and any written verifications required by the Oklahoma Adoption Code

from the individual before whom a consent, extra judicial consent, or permanent relinquishment was executed;

3. A certified copy of any court order terminating the parental rights of the minor's parents or guardian;

4. A certified copy of any existing court order or the petition in any pending proceeding concerning custody of or visitation with the minor;

5. A copy of any home study performed on the petitioners, including the home studies required by Sections 7505-5.1, 7505-5.2 and 7505-5.3 of this title;

6. In an adoptive placement in which the adoptive parents or birth parents were not both legal residents of Oklahoma prior to the initiation of the adoption process and the parties are not otherwise exempt from the Interstate Compact on the Placement of Children, a copy of the approval by both the sending state and receiving state pursuant to the Interstate Compact on the Placement of Children;

7. A copy of any agreement with a public agency to provide a subsidy for the benefit of a minor with a special need;

8. A verified document by the Department, or child-placing agency that placed the minor for adoption, or the attorney for the adoptive parent in direct placement adoption, or the person who is placing the minor for adoption in a direct placement adoption in which the adoptive parent is not represented by an attorney, stating that the petitioner for adoption has been furnished a copy of the medical and social history report, pursuant to Section 7504-1.2 of this title;

9. The name and address, if known, of any person who is entitled to receive notice of the proceeding for adoption;

10. The affidavit of expenditures;

11. A copy of the medical and social history report, as required by subsection D of Section 7504-1.2 of this title,

including the initial report and all supplemental reports, if any, prepared pursuant to subsection C of Section 7504-1.2 of this title;

12. Affidavits of nondisclosure, if any, signed by a biological parent;

13. a. A copy of the state criminal background check, national fingerprint-based criminal background check, if required by law, a search of the Department of Corrections' files maintained pursuant to the Sex Offenders Registration Act, and a search of the child abuse and neglect files maintained for review by authorized entities by the Department of Human Services pursuant to the Oklahoma Child Abuse Reporting and Prevention Act, or

b. If the adoptive petitioners are not legal residents of Oklahoma and the sending state has comparable and accessible checks and searches as specified by subparagraph a of this paragraph, a copy of the approval of both the sending state and receiving state pursuant to the Interstate Compact on the Placement of Children or verification that this adoptive placement is otherwise exempt from the Interstate Compact on the Placement of Children; and

14. Any such other document or information required by the court.

B. If an item required by subsection A of this section is not available, the person responsible for furnishing the item shall file an affidavit explaining its absence.

SECTION 6. AMENDATORY 20 O.S. 2001, Section 91.2, is amended to read as follows:

Section 91.2 A. To facilitate the trial and disposition of cases, actions filed in the district court shall be assigned to various dockets by the clerk of the court pursuant to the direction

and supervision of the presiding judge of the district. Until changed by order of the Supreme Court, only the following dockets are established: a civil docket, a criminal docket, a traffic docket, a probate docket, a juvenile and family relations docket, and a small claims docket.

B. Whenever a district court establishes a drug court program pursuant to the provisions of ~~Sections 1 through 12 of this act~~ the Oklahoma Drug Court Act, the judge having authority over the program shall cause to be established a drug court docket. Whenever a district court that has a drug court program establishes a maternal drug court program pursuant to Section 471.1 of Title 22 of the Oklahoma Statutes, the judge having authority over the program shall cause to be established a maternal drug court docket. In those cases assigned to the drug court docket or maternal drug court docket, the judge shall determine what information or pleadings are to be maintained in a confidential case file which shall be closed to public inspection. The originating criminal case file shall remain open to public inspection. Nothing in this section shall prohibit the district attorney, defense attorney, or the victim-witness coordinator from advising any victim or other person regarding the assignment or disposition of a drug court or maternal drug court case.

SECTION 7. AMENDATORY 22 O.S. 2001, Section 471, is amended to read as follows:

Section 471. Sections ~~1~~ 471 through ~~12~~ 471.11 of this ~~act~~ title shall be known and may be cited as the "Oklahoma Drug Court Act".

SECTION 8. AMENDATORY 22 O.S. 2001, Section 471.1, is amended to read as follows:

Section 471.1 A. For purposes of ~~this act~~ the Oklahoma Drug Court Act, "drug court", "drug court program" or "program" means an immediate and highly structured judicial intervention process for substance abuse treatment of eligible offenders which expedites the

criminal case, and requires successful completion of the plea agreement in lieu of incarceration. A "maternal drug court program" means a drug court program for a pregnant woman.

B. Each district court of this state is authorized to establish a drug court program pursuant to the provisions of ~~this act~~ the Oklahoma Drug Court Act, subject to availability of funds. Juvenile drug courts may be established based upon the provisions of ~~this act~~ the Oklahoma Drug Court Act; provided, however, juveniles shall not be held, processed, or treated in any manner which violates any provision of Title 10 of the Oklahoma Statutes. Each district court that establishes a drug court program pursuant to the provisions of the Oklahoma Drug Court Act may establish a separate docket for a maternal drug court program, subject to the availability of funds. References in the Oklahoma Drug Court Act to drug court programs shall include maternal drug court programs, unless otherwise provided by law.

C. Drug court programs shall not apply to any violent criminal offense. Eligible offenses may further be restricted by the rules of the specific drug court program. Nothing in ~~this act~~ the Oklahoma Drug Court Act shall be construed to require a drug court to consider every offender with a treatable condition or addiction, regardless of the fact that the controlling offense is eligible for consideration in the program. Traditional prosecution shall be required where an offender is determined not appropriate for the drug court program.

D. Drug court programs shall require a separate judicial processing system differing in practice and design from the traditional adversarial criminal prosecution and trial systems. Whenever possible, a drug court team shall be designated consisting of a judge to administer the program, a district attorney, a defense attorney, and other persons designated by the drug court team who shall have appropriate understanding of the goals of the program and

of the appropriate treatment methods for the various conditions. The assignment of any person to the drug court team shall not preclude the assigned person from performing other duties required in the course of their office or employment. The chief judge of the judicial district, or if the district has more than one chief judge than the presiding judge of the Administrative Judicial District, shall designate one or more judges to administer the drug court program. The assignment of any judge to a drug court program or the designation of a drug court docket shall not mandate the assignment of all substance abuse related cases to the drug court docket or the program; however, nothing in ~~this act~~ the Oklahoma Drug Court Act shall be construed to preclude the assignment of all criminal cases relating to substance abuse or drug possession as provided by the rules established for the specific drug court program.

E. When a drug court program is established, the arresting officer shall file the criminal case record for potentially eligible offenders with the district attorney within four (4) days of the arrest. The district attorney shall file an information in the case within twenty-four (24) hours of receipt of the criminal case record when the offender appears eligible for consideration for the program. The information may be amended as necessary when an offender is denied admittance into the drug court program or for other purposes as provided in Section 304 of ~~Title 22 of the Oklahoma Statutes~~ this title. Any person arrested upon a warrant for his or her arrest shall not be eligible for the drug court program without the approval of the district attorney. Any criminal case which has been filed and processed in the traditional manner shall be cross-referenced to a drug court case file by the court clerk, if the case is subsequently assigned to the drug court program. The originating criminal case file shall remain open to public inspection. The judge shall determine what information or

pleadings are to be retained in the drug court case file, which shall be closed to public inspection.

F. The court may request assistance from the Department of Mental Health and Substance Abuse Services which shall be the primary agency to assist in developing and implementing a drug court program, a maternal drug court program, or from any state or local agency in obtaining the necessary treatment services which will assure maximum opportunity for successful treatment, education, and rehabilitation for offenders admitted to the program. All participating state and local agencies are directed to coordinate with each other and cooperate in assisting the district court in establishing a drug court program and a maternal drug court program.

G. Each drug court program shall ensure, but not be limited to:

1. Strong linkage between participating agencies;
2. Access by all participating parties of a case to information on the offender's progress;
3. Vigilant supervision and monitoring procedures;
4. Random substance abuse testing;
5. Provisions for noncompliance, modification of the treatment plan, and revocation proceedings;
6. Availability of residential treatment facilities and outpatient services;
7. Payment of court costs, treatment costs, supervision fees, and program user fees by the offender;
8. Methods for measuring application of disciplinary sanctions, including provisions for:
 - a. increased supervision,
 - b. urinalysis testing,
 - c. intensive treatment,
 - d. short-term confinement not to exceed five (5) days,

- e. recycling the offender into the program after a disciplinary action for a minimum violation of the treatment plan,
- f. reinstating the offender into the program after a disciplinary action for a major violation of the treatment plan, and
- g. revocation from the program; and

9. Methods for measuring performance-based effectiveness of each individual treatment provider's services.

H. All drug court programs shall be required to keep reliable data on recidivism, relapse, restarts, sanctions imposed, and incentives given.

SECTION 9. AMENDATORY 22 O.S. 2001, Section 471.2, is amended to read as follows:

Section 471.2 A. The initial opportunity for review of an offender for a drug court program shall occur within four (4) days after the arrest and detention or incarceration of the offender in the city or county jail, or if an immediate bond release program is available through the jail, the initial opportunity for review shall occur in conjunction with the bond release program. When a drug court is established, the following information shall be initially reviewed by the sheriff or designee, if the offender is held in a county jail, or by the chief of police or designee, if the offender is held in a city jail:

1. The offender's arrest or charge does not involve a crime of violence against any person, unless there is a specific treatment program in the jurisdiction designed to address domestic violence and the offense is related to domestic violence and substance abuse;

2. The offender has no prior felony conviction in this state or another state for a violent offense, except as may be allowed in a domestic violence treatment program authorized by the drug court program. It shall be sufficient for this paragraph that a criminal

history records name search was conducted and indicated no apparent violent offense;

3. The offender's arrest or charge does not involve a violation of the Trafficking In Illegal Drugs Act, ~~Section 2-414 et seq. of Title 63 of the Oklahoma Statutes;~~

4. The offender, unless being considered for a maternal drug court program, has committed a felony offense; ~~and~~

5. The offender, if being considered for a maternal drug court program, has committed a misdemeanor or felony offense; ~~and~~

6. The offender:

- a. admits to having a substance abuse addiction,
- b. appears to have a substance abuse addiction,
- c. is known to have a substance abuse addiction, or
- d. the arrest or charge is based upon an offense eligible for the drug court program.

B. If it appears to the reviewing officer that the offender may be potentially eligible for the drug court program based upon a review of the information in subsection A of this section, the offender shall be given an eligibility form which may be voluntarily completed by the offender, and the reviewing officer shall file the criminal case record within the time prescribed in subsection E of Section ~~2~~ 471.1 of this ~~act~~ title. The offender shall not automatically be considered for the program based upon this review. The offender must request consideration for the drug court program as provided in subsection C of this section and shall have approval from the district attorney before being considered for the drug court program. The eligibility form shall describe the drug court program for which the offender may be eligible, including, but not limited to:

1. A full description of the drug court process and investigation;

2. A general explanation of the roles and authority of the supervising staff, the district attorney, the defense attorney, the treatment provider, the offender, and the judge in the drug court program;

3. A clear statement that the drug court judge may decide after a hearing not to consider the offender for the drug court program and in that event the offender will be prosecuted in the traditional manner;

4. A clear statement that the offender is required, before consideration in the program, to enter a guilty plea as part of a written plea agreement;

5. A clear statement that the plea agreement will specify the offense to which the guilty plea will be entered and will state any penalty to be imposed for the offense, both in the event of a successful completion of the drug court program, and in the event of a failure to complete the program;

6. A clear statement that the offender must voluntarily agree to:

- a. waive the right to a speedy trial,
- b. waive the right to a preliminary hearing,
- c. the terms and conditions of a treatment plan, and
- d. sign a performance contract with the court;

7. A clear statement that the offender, if accepted into the drug court program, may not be incarcerated for the offense in a state correctional institution or jail upon successful completion of the program;

8. A clear statement that during participation in the drug court program should the offender:

- a. fail to comply with the terms of the agreements,
- b. be convicted of a misdemeanor offense which reflects a propensity for violence,
- c. be arrested for a violent felony offense, or

d. be convicted of any felony offense,
the offender may be required, after a court hearing, to be revoked
from the program and sentenced without trial pursuant to the
punishment provisions of the negotiated plea agreement; and

9. An explanation of the criminal record retention and
disposition resulting from participation in the drug court program
following successful completion of the program.

C. 1. The offender may request consideration for the drug
court program as follows:

a. if the offender is incarcerated, the offender must
sign and complete the eligibility form and return it
to the sheriff, if the offender is held in the county
jail; or to the chief of police, if the offender is
held in a city jail. The sheriff or chief of police,
upon receipt of the eligibility form, shall file the
form with the district attorney at the time of filing
the criminal case record or at any time during the
period of incarceration when the offender completes
the form after the criminal case record has been
filed, or

b. after release of the offender from incarceration, the
offender must sign and complete the eligibility form
and file it with the district attorney or the court,
prior to or at the time of either initial appearance
or arraignment.

2. Any offender desiring legal consultation prior to signing or
completing the form for consideration in a drug court program shall
be referred to the defense attorney of the drug court team, or a
public defender, if the offender is indigent, or allowed to consult
with private legal counsel.

3. Nothing contained in the provisions of this subsection shall
prohibit the drug court from considering any offender deemed

eligible for the program at any time prior to sentencing whose case has been prosecuted in the traditional manner, or upon a violation of parole or probation conditions relating to substance abuse, upon recommendation of the district attorney as provided in Section ~~9~~ 471.8 of this ~~act~~ title.

D. When an offender has filed a voluntary request to be considered for a drug court program on the appropriate form, the district attorney shall indicate his or her approval of the request by filing the form with the drug court judge. Upon the filing of the request form by the district attorney, an initial hearing shall be set before the drug court judge. The hearing shall be not less than three (3) work days nor more than five (5) work days after the date of the filing of the request form. Notice of the hearing shall be given to the drug court team, or in the event no drug court team is designated, to the offender, the district attorney, and to the public defender. The offender shall be required to notify any private legal counsel of the date and time of the hearing.

SECTION 10. This act shall become effective July 1, 2002.

SECTION 11. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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